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October 15, 2012

Mr. Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551
Docket No. R-1443, RIN 7100-AD90

Alfred M. Pollard
General Counsel
Attention: Comments/ RIN 2590-AA58
Federal Housing Finance Agency
Eighth Floor
400 7th Street, SW
Washington, DC 20024

Ms. Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552
Docket No. CFPB-2012-0031, RIN 3170-AA11

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314
RIN 3133-AE04

Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Office of the Comptroller of the Currency
250 E Street, SW, Mail Stop 2-3
Washington, DC 20219
Docket ID OCC-2012-0013

Re: Appraisals for Higher-Risk Mortgage Loans; Proposed Rule

Dear Sir or Madam:

The Independent Community Bankers of America[1] welcomes the opportunity to comment on the proposal issued jointly by the agencies listed above to amend Regulation Z to implement a new

[1]The Independent Community Bankers of America®, the nation's voice for more than 7,000 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services.

With nearly 5,000 members, representing more than 23,000 locations nationwide and employing more than 280,000 Americans, ICBA members hold more than $1.2 trillion in assets, $1 trillion in deposits, and $700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

Truth in Lending Act (TILA) provision requiring appraisals for "higher-risk" mortgages as called for by the Dodd-Frank Wall Street Reform and Consumer Protection Act. For mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage, the proposed rule would require creditors to obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals and give applicant a copy of the written appraisals used.

The new TILA section 129H does not permit a creditor to extend credit in the form of a higher-risk mortgage loan to any consumer without first:

- Obtaining a written appraisal performed by a certified or licensed appraiser who conducts a physical property visit to the interior of the property;
- Obtaining an additional appraisal from a different certified or licensed appraiser if the purpose of the higher-risk mortgage is to finance the purchase or acquisition of the property from a seller within 180 days of the purchase or acquisition of the property by that seller at a price that was lower than the current sale price of the property. The additional appraisal must include an analysis of the difference in sales prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.
- Provide the applicant, at the time of the initial mortgage application with a new disclosure stating that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at their expense.
- Providing the applicant with one copy of each appraisal conducted in accordance with TILA section 129H without charge, at least three days prior to the transaction closing date.

Definition of "Higher-Risk Mortgage"
New TILA section 129H(f) defines a "higher-risk mortgage" with reference to the annual percentage rate (APR) for the transaction. A "higher-risk mortgage" is a residential mortgage loan secured by a principal dwelling with an APR that exceeds the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set:

- by 1.5 or more percentage points for a first lien residential mortgage loan with an original principal obligation amount that does not exceed the amount for the maximum limitation on the original principal obligation of a mortgage in effect for a residence of the applicable size as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act; or
- by 2.5 or more percentage points for a first lien residential mortgage loan having an original principal obligation amount that exceeds the amount for the maximum limitation on the original principal obligation of a mortgage in effect for a residence of the applicable size, as of the date of such interest rate set;
- or by 3.5 or more percentage points for a subordinate lien residential mortgage loan.

The statutory definition of "higher-risk mortgage" differs from the existing regulatory definition of higher-priced mortgage loan. The definition of higher-risk mortgages expressly excludes loans that meet the definition of a qualified mortgage and includes an additional 2.5 percentage point threshold for first-lien jumbo mortgages loans. The definition of higher-priced mortgage loans contains the threshold only for purposes of applying the requirement to establish escrow accounts for higher-priced mortgages.

ICBA recognizes that there are statutory limitations on how these terms are defined, however we urge the agencies to keep the definition of "higher-risk mortgage" as simple as possible and to conform it as closely to other special mortgage definitions as practicable for the benefit of consumers and lender compliance, as long as it does not materially increase the number of loans subject to the requirements. The concurrent use of "higher-risk" and "higher-priced" mortgage in different portions of Regulation Z will likely confuse creditors and consumers. Further, with definitions of qualified mortgages, qualified residential mortgages, high-priced mortgages, higher-priced mortgages, and high cost mortgages, compliance issues become more and more complex and costly which results in higher mortgage costs being passed on to consumers and more confusion on the part of consumers as they attempt to compare mortgages.

APR and Transaction Coverage Rate

As stated above, the mathematical determination of whether or not a mortgage is "higher-risk" is dependent on the use of the APR calculation. The Agencies are also considering the use of a "transaction coverage rate (TCR) for the APR metric to determine whether a closed-end loan is "higher-risk". The TCR would be calculated in a manner similar to how the APR is calculated, except that the prepaid finance charge used for the TCR calculation would include only charges retained by the creditor, a mortgage broker, or an affiliate of either. The TCR would not reflect other closing costs that would be included in the broader finance charge for purposes of calculating the APR that would be disclosed to consumers. If the CFPB adopts a more inclusive finance charge, the Agencies will consider whether to adopt the TCR in this rule. This would allow creditors to exclude some fees from the rate used to determine if a loan is a higher-risk mortgage loan; as a result fewer loans would be covered by the rule.

Consumer testing has clearly documented that consumers do not understand the APR calculation and how it may relate to the interest rate on a loan and we have concerns about the possible use of a TCR as stated in a joint association letter to the CFPB dated September 10, 2012 (attached). We are in a period where a number of residential mortgage related rules are being considered and it is important that calculations used in these rules be consistent.

Exclusions from "Higher Risk" Definition

The definition of "higher-risk mortgage" expressly excludes qualified mortgages as defined in TILA section 129C, as well as reverse mortgage loans. ICBA urges that the agencies also exclude from the definition qualified residential mortgages, FHA loans, RHS loans, loans qualified for GSE securitizations and refinance loans. These mortgage loans either have significant oversight such as in the case of GSE loans or existing anti-flipping protections, such as in the case of FHA-insured loans. We also support the exclusion of construction and bridge loans because we do not believe it is practical to include them and consumers are not exposed to risk on these loans at a level comparable to other residential mortgage loans that Congress targeted in the statute.

The Agencies believe that Congress intended all creditors that extend higher-risk mortgage loans, such as independent mortgage banks, to obtain appraisals from appraisers who conform to the standards in FIRREA related to the development and reporting of the appraisal. We agree with this interpretation and believe that all creditors should be subject to the same set of rules.

Safe Harbor

The Agencies proposed a safe harbor for creditors to ensure compliance with sections of the proposed rule when the appraiser certifies compliance with USPAP and applicable FIRREA title XI requirements. We agree that determining whether an appraiser is licensed or certified by a particular state is a straightforward matter. It is much more difficult to determine with any degree of certainty that an appraiser complied with USPAP when conducting a required appraisal. Creditors should not be placed in a position being required to verify compliance and in essence provide supervisory oversight of the appraisal process. Thus, the proposed safe harbor and its required elements, such as order that the appraiser perform the appraisal in conformity with USPAP and FIRREA title XI, verify though the National Registry that the appraiser who signed the appraiser's certification holds a valid appraisal license or certification in the state, check and confirm that specified items have been addressed on the appraisal etc., is reasonable and appropriate. We also agree that the creditor should not be required to make any independent judgment or perform independent analysis of the conclusions or factual statements in the written appraisal as it may raise independence questions.

Rural Appraisal Issues

While agency analysis concludes that except for in Alaska, rural counties should have enough appraisers to meet the anti-flipping requirement of conducting two appraisals, we believe that the requirements will be difficult for more rural creditors to comply with. Clearly, rural areas have far fewer licensed and certified appraisers than in more populated areas and those appraisers who are doing business in a particular rural area may not be available or able to conduct the appraisal within the timeframe needed. Also, listed appraisers located in a particular rural area may be best qualified to appraise farms rather than individual residences.

Further, in the impact analysis on institutions with $10 billion or less in total assets, the CFPB estimates costs based on averages that blur the true costs to individual institutions. For example, the CFPB estimates that the cost to depository institutions and credit unions with $10 billion or less in assets of conducting a second full interior appraisal for recent properties sold would be $295 per institution per year. The CFPB determines this figure by multiplying the estimated cost of an appraisal ($600) by the estimated number of second appraisals (3,350) and dividing the sum by the number of institutions falling in this category (6,825). The result is the amount that the CFPB assumes that an institution would need to absorb per year because it is prohibited from passing on the cost of the additional appraisal: $295. Yet, the CBPB notes that median appraisal fees range from $300 to $600. Clearly, the numbers do not correctly estimate the true cost of implementing this rule to smaller institutions because they must absorb the actual cost of the appraisal, not an estimated industry average. It will be particularly hard for small institutions in rural areas to absorb the additional appraisal fee because of their smaller earnings base. We have similar concerns that other fees to consumers and creditors that are based on an industry average are underestimated and smaller institutions will be unwilling to extend mortgages in these situations because of costs they cannot pass on to the borrower.

Consequently, we urge the agencies to consider providing an exemption from the additional appraisal requirement for rural properties. Because there are fewer properties in rural areas, the possibility that a property is being flipped is far less than in urban or suburban areas. In our view, few if any consumers would be hurt by such an exemption.

The Agencies request comments on how to define "rural." This can be a challenging task and we have attached a discussion paper providing ICBA's perspective. We ask that the Agencies use a definition of "rural" that is consistent with that used in rules addressing the use of escrow accounts and defining "Qualified Mortgage."

Maintain FIRREA Appraisal Exemption
While secondary market standards require appraisals, many community banks, particularly in rural areas, have been able to save their customers money by not requiring appraisals on mortgages held in portfolio of $250,000 or less as permitted under FIRREA title XI. Through this rule, the Agencies propose to expand FIRREA title XI appraisal requirements on mortgages that previously were exempt. We strongly oppose this expansion for residential mortgages held in portfolio. Since the bank is holding the loans until they mature or are refinanced, it has a strong incentive to ensure that the property sale is legitimate and the property is properly valued. We urge that the $250,000 or less exemption for all residential mortgage loans be maintained. Congress did not remove the size exemption that has been provided in regulations issued by banking agencies and it should not be removed by the Agencies in the final rule.

Other Exemptions
We recommend that exemptions from the additional appraisal requirement be permitted for events such as a property being sold to settle an estate, a divorce settlement or an employment transfer. These are situations where property ownership is being transferred without risk that the property is being flipped.

In our view, there should be an exemption for a relatively small increase in price. In our view 15 percent would be an amount that would be workable for most geographic locations. Stating the amount as a percentage rather than a dollar amount is most appropriate given the range of home prices in different locations. Borrowers in locations where home prices are relatively low would be disadvantaged if a dollar amount is used as the exemption threshold.

Summary
ICBA recognizes that Congress provided additional protections for consumers and creditors regarding residential mortgages that are considered to be "higher-risk" to ensure that the property has an interior appraisal by a licensed or certified appraiser and required an additional appraisal to protect against property flipping and that the statutory language provides significant constraints as the Agencies develop implementing regulations. Clearly, property flipping has hurt consumers, creditors and the economy.

ICBA is concerned that the proposed rule will have a significant negative impact on smaller lenders, particularly in rural areas as they attempt to meet the appraisal requirements, especially the requirement for an additional appraisal that they must pay for.

The various special residential mortgage definitions and compliance burdens are confusing and burdensome to creditors and consumers and we urge the that the definitions in this proposal be made as consistent as possible with other existing and pending definitions so as not to unnecessarily constrain credit availability.

We appreciate the opportunity to comment on this important issue. Please contact me by email at ann.grochala@icba.org or by phone at 202-659-8111 if you would like to discuss our comments further.

Sincerely,

/s/
Ann M. Grochala
Vice President, Lending and Housing Policy

INDEPENDENT COMMUNITY BANKERS of AMERICA

Alternative Regulation Z Definitions for “Rural” and “Underserved”

DISCUSSION PAPER

I. Dodd Frank Statutory Language Regarding “Rural” or “Underserved”

(E) BALLOON LOANS.—The Board may, by regulation, provide that the term ‘qualified mortgage’ includes a balloon loan—
(i) that meets all of the criteria for a qualified mortgage under subparagraph (A) (except clauses (i)(II), (ii), (iv), and (v) of such subparagraph);
(ii) for which the creditor makes a determination that the consumer is able to make all scheduled payments, except the balloon payment, out of income or assets other than the collateral;
(iii) for which the underwriting is based on a payment schedule that fully amortizes the loan over a period of not more than 30 years and takes into account all applicable taxes, insurance, and assessments; and
(iv) that is extended by a creditor that—
(I) operates predominantly in rural or underserved areas;
(II) together with all affiliates, has total annual residential mortgage loan originations that do not exceed a limit set by the Board;
(III) retains the balloon loans in portfolio; and
(IV) meets any asset size threshold and any other criteria as the Board may establish, consistent with the purposes of this subtitle.

(Dodd Frank Wall Street Reform and Consumer Protection Act, PL 111–203, JULY 21, 2010).

II. Proposed Regulation Z Language Regarding “Rural” or “Underserved”

For purposes of paragraph (f)(1)(v)(A) of this section--
(i) A county is “rural” during a calendar year if it is not in a metropolitan statistical area or a micropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget, and:
(A) It is not adjacent to any metropolitan area or micropolitan area; or
(B) It is adjacent to a metropolitan area with fewer than one million residents or adjacent to a micropolitan area, and it contains no town with 2,500 or more residents.
(ii) A county is “underserved” during a calendar year if no more than two creditors extend covered transactions five or more times in the county.

(76 FR 27486).

III. Community Bank Balloon Mortgage Loans

- Balloon mortgage loans provided by community banks are not the high-risk products that were provided by un-regulated mortgage lenders and large financial institutions that led to many foreclosures for consumers.

- Community bank balloon loans have been provided in small communities for decades. These traditional products require a sizeable down payment. Community banks use this structure to match the maturity of their deposit base which provides funding for these loans. These mortgage loans are held in portfolio by community banks for the life of the loan.

- These loans are especially significant for consumers in rural communities where it is difficult to impossible to sell the loans into the secondary market due to the unique nature of rural properties and the associated challenges in getting comparable sales for appraisals that meet secondary market standards, such as distance to comparable properties or the number of adjustments to the value because rural properties do not all look alike. Therefore, the only way the bank can safely and soundly extend credit is to structure the transaction as a higher interest balloon loan, which is generally renewed at maturity.

IV. ICBA Concerns

- There are over 7,500 community banks in the U.S., and the vast majority of these are located in communities of 50,000 or fewer residents. Yet, ICBA has heard from many of its members that they would not qualify for an exemption under the proposed standards for "rural" and "underserved." One analysis of the counties in Iowa showed only 16 out of Iowa's 99 counties would be considered "rural" under the Federal Reserve's definition.

- The proposed provision also ignores the fact that many rural areas with lower property values are located within a close vicinity to a metropolitan area. For example, ICBA has heard from community bankers in rural areas that are close to larger cities that the financial institutions in those larger cities do not want to make the smaller loans to the customers in their community because the smaller principal loans are not as profitable.

- The criterion for the "underserved" exemption puts community banks in the position of having to monitor not only their own loan volume, but the loan volume of other lenders in their area, which is an impossible standard to satisfy.

- The extensive regulatory requirements for balloon mortgage loans will prevent community banks from offering these products to consumers who may not qualify for other loans given the atypical nature of their property.

- The CFPB has the authority under the Dodd-Frank Act to exempt community bank portfolio loans from the requirements, without imposing the other extensive and confusing requirements.[1]

V. ICBA Recommendations

- Allow balloon mortgage loans to be considered "qualified mortgages" if the loans are held in portfolio by the financial institution.

- Alternatively, revise the definitions of "rural" and "underserved."

Factors for Defining "Rural" (can include any of the following)

- Definition of rural should include all nonmetropolitan areas of the U.S. including territories outside of Census Bureau defined places of 50,000 or more residents (according to the most recent census) and that are outside of an urbanized area. Most Census Bureau "places" are incorporated entities with legally prescribed boundaries (e.g., Oklahoma City) although some are locally recognized, unincorporated communities. Rural is thus defined as territories outside of these boundaries together with places smaller than a selected population threshold. One of the most widely used rural definitions consists of the 2,000+ nonmetropolitan counties lying outside metro boundaries. Because these areas are readily identifiable and easily distinguished, this definition is used by many researchers and for a variety of government programs. Additionally, most Federal agencies and demographic experts have determined that densely populated areas with 50,000 or more inhabitants are urbanized areas.[2]

- Rural should include any area that is considered to be "rural" for the purposes of administering a federal, state or local program that is designed to target rural recipients.

- Any area where the Farm Credit System (FCS) is authorized to make loans. According to their charter, the FCS finances agriculture and related activities in rural America. Therefore, any location where they are extending credit would have to be deemed rural.

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[1] The Dodd Frank statute states, in the section entitled "Revision of Safe Harbor Criteria," that:

> The [CFPB] may prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section, necessary and appropriate to effectuate the purposes of this section and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections. (Section 1412, Pub. Law 111-203—July 21, 2010).

[2] For more information, visit the USDA website at http://www.ers.usda.gov/AmberWaves/June08/Features/RuralAmerica.htm.

<u>Factors for Defining "Underserved" (can include any of the following)</u>

- A geographical area within which one or more economic indicators differ from those of metro areas. Such economic indicators include: lower level of income; lower level of education; higher level of seasonal and manufactured housing; higher average age population; a lower average population density than in metropolitan areas; a higher level of food stamp recipients.

  - For example, criteria could be based on the Community Reinvestment Act's Regulation BB definition of "community development," which would include low or moderate income geographies, and distressed or underserved nonmetropolitan middle-income geographies designated by the FDIC, Federal Reserve and OCC.

- Any area where the Farm Credit System (FCS) is authorized to make loans. According to their charter, the FCS finances agriculture and related activities in rural America.

September 10, 2012

Ms. Monica Jackson
Office of the Executive Secretary
The Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Docket No. CFPB-2012-0028 or RIN 3170-AA28

Dear Ms. Jackson:

The undersigned trade associations appreciate the opportunity to write to you on the proposed rule amending Regulation Z and Regulation X to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. This letter is in addition to the individual comments that our associations will submit on these rulemakings.

At the outset, we thank you for your September 6th Federal Register announcement to extend the comment period for these important regulatory changes. Our associations believe that the current reform process poses a unique opportunity to modernize the mortgage lending regulations and achieve effective and lasting consumer protections. The new regulatory system requires proper balance, and must avoid confusion and uncertainty. We question, therefore, the wisdom and practicality of also injecting new requirements for the so-called "All In" annual percentage rate or APR into the rulemaking. On balance, we strongly believe that aspect of the proposal should be dropped.

As the CFPB and other agencies have documented and industry can attest, the current APR is of little value to consumers. It neither enhances a borrower's understanding of the obligation they are undertaking, nor serves as an accurate shopping tool. The Bureau's own research indicates that consumers confuse the APR with the note rate; this confusion has nothing to do with what is in or out of the APR calculation. Simply adding additional fees to an unhelpful formulation that consumers do not use or understand will add significant costs and complications to the rulemaking effort, with no measurable benefit to the borrower.

The APR is embedded in numerous other mortgage finance rules as a trigger for additional compliance requirements, many of which are associated with steep legal, compliance and reputational risks. However, it is entirely unclear how the reconfigured APR will impact or relate to these other rules, such as the yet to be finalized Ability to Repay/Qualified Mortgage rule and the HOEPA rule, to name two. The CFPB has suggested the possibility of a separate transaction coverage rate (TCR), but that approach will require yet another new calculation and additional burdens for industry and costs that are passed on to consumers.

It is critical to note that Dodd-Frank itself does not require wholesale changes to the APR. To the contrary, the statute relies on this figure by using it as a measurement for a number of new provisions. The sheer magnitude of regulatory changes coming forth has the potential to impose enormous confusion and cost to both industry and consumers. For these reasons, we urge the CFPB to simplify its approach to forthcoming RESPA and TILA rulemakings by focusing only on those elements that are truly needed to implement Dodd-Frank requirements and will have maximum impact on promoting consumer understanding.

Finally, there are several outstanding proposed rules making changes to Regulation Z. These proposals cross-reference provisions in each other, making it difficult to tell what each references and what Regulation Z would look like if all of these proposals are finalized. In addition, there are conflicts among the proposals. For example, the proposed Ability to Repay rule would remove § 1026.35 because Dodd-Frank made it obsolete, but the proposed HOEPA rule would retain it. We respectfully request that the CFPB publish a single version of Regulation Z as it would be amended by all of the pending rulemakings as soon as possible. This would improve our ability to provide input that CFPB will need before the comment periods close.

Thank you for this opportunity to comment. We stand ready to assist you as you endeavor to meet the charge provided to you by Dodd-Frank.

Sincerely,

American Bankers Association
American Escrow Association
American Land Title Association
Community Mortgage Banking Project
Consumer Mortgage Coalition
Consumer Bankers Association
Housing Policy Council
Independent Community Bankers of America
Mortgage Bankers Association of America
National Association of Federal Credit Unions
National Association of Home Builders
National Association of Mortgage Brokers
National Association of Realtors
Real Estate Services Providers Council, Inc. (RESPRO®)
Real Estate Valuation Advocacy Association
The Realty Alliance